IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ex.L/Nk Man Singh v. Union of India & Ors.

S.B. CIVIL WRIT PETITION NO.1807/2003
under Articles 14, 21 & 300-A of the Constitution of India.

Date of Order : 17th January, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.K.Nanda, for the petitioner.
Mr. B.R.Mehta, for the respondents.

BY THE COURT :

The petitioner entered in the services of Union of India being enrolled with Central Reserve Police Force on 7.7.1956. On enrollment the petitioner was inducted to XV Battalion Central Reserve Police Force which is now known as 61 Battalion CRPF.

The petitioner was sent for examination of medical fitness on 7.4.1966. The petitioner was found suffering from some ailment and, therefore, he was sent for screening of chest and E.C.G. at Victoria Hospital, Ajmer on 12.4.1966. The petitioner was directed to report to Additional Deputy Inspector General of Police, Record Office, Central Reserve Police Force, Neemach for his final medical board examination on 23.4.1966. The medical examination of the petitioner by the competent medical board was conducted from 24.4.1966 to

4.5.1966. The petitioner as a consequence of recommendations made by the medical board was ordered to be invalided out of service. Accordingly the petitioner was invalided out on medical grounds and was discharged from services w.e.f. 6.5.1966. A discharge certificate dated 25.8.1966 was subsequently issued by Commandant XV Battalion, Ajmer (now known as 61 Battalion) wherein conduct and character of the petitioner has been shown "exemplary".

The petitioner after getting discharged from services made number of requests to the respondents for grant of pension to him but of no consequence. The petitioner was communicated from the office of Commandant 61 Battalion CRPF, Ludhiana (Punjab) that as per Pension Rules a Government Servant will have to complete 10 years continuous qualifying service to become eligible for civil pension. The pension was denied to the petitioner since he had not completed 10 years qualifying services in CRPF. The petitioner thereafter made certain representations and ultimately served a notice for demand of justice through his counsel Shri S.K.Nanda, Advocate stating therein that in light of provisions of Rule 38 read with Rule 49 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "the Act of 1972") he is entitled for pension. No response was given to the notice referred above, hence the petitioner preferred the present writ petition before this Court.

A reply to the writ petition has been filed by the respondents stating therein that the petitioner was ordered to be invalided out of service on medical grounds and he was discharged from service on 6.5.1966. At the time of discharge from services he was lacking by a period of more than three months in completion of statutory qualifying service i.e. the period of 10 years on basis of it the respondents justified that decision for not granting pension to the petitioner.

I have heard learned counsel for the parties.

The contention of the counsel for the petitioner is that under Rule 38(1) of the Rules of 1972 invalid pension may be granted if a government servant retires from service on account of any bodily or mental infirmity which permanently incapacitates him for service. The petitioner was retired from services on becoming invalid and, therefore, pension is required to be given to him. He has further stated that in light of sub-rule(3) of Rule 49 of the Rules of 1972 while calculating the length of qualifying service fraction of a year equal to three months and above is required to be treated as completed one half year and the petitioner who has completed services of 9 years 10 months and five days is, therefore, required to be deemed to have completed 10 years of service and as such is to be treated entitled for grant of invalid pension.

Rule 38(1) of the Rules of 1972 reads as under:-

> “38.Invalid pension
>
> (1) Invalid pension may be granted if a Government servant retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

According to Rule 38 of the Rules of 1972 invalid pension may be granted if a Government servant retires from service on account of any bodily or mental infirmity which permanently incapacitates a Government servant from the service. There is no dispute that the petitioner was retired from service on becoming invalid.

Rule 49 of the Rules of 1972 pertains to amount of pension and also prescribes a criteria for calculating the length of qualifying service. Sub-rule(3) of Rule 49 of the Rules of 1972, which is relevant in present controversy, reads as under:-

> “49(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service.”

According to sub-rule(3) of Rule 49 of the Rules of 1972 while calculating qualifying service a fraction of a year equal to three months or above it is required to be treated as a completed one half year. Meaning thereby, after complete year a fraction of three months or above it is required to be treated as a period of six months.

In the present case the petitioner admittedly served the respondents for a period of 9 years 10 months and five days, as such the petitioner is having a fraction of a year in his account. By taking the criteria as provided under sub-rule(3) of Rule 49 of the Rules of 1972 the petitioner is entitled to get this fraction treated as one half year. By addition of this one half year the petitioner certainly completes qualifying service of 10 years as required under the Rules of 1972. In view of it the petitioner is entitled for disability pension, the same was wrongly denied to him.

The petition for writ, therefore, succeeds and is allowed. The respondents are directed to release invalided pension to the petitioner in terms of Rule 38 of the Rules of 1972 from the date he was invalided out from service. The arrears accruing as a consequence of the direction above be given to the petitioner within a period of three months from today with interest @ 6.5% per annum.

The cost of the petition is made easy.

(GOVIND MATHUR),J.

KKM/PS.